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Federal Communications Commission

DA 96-1198

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Llano and Marble Falls, Texas)

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MM Docket No. 95-49  
RM-8558

### FURTHER NOTICE OF PROPOSED RULE MAKING

**Adopted: July 26, 1996****Released: August 2, 1996**

Comment Date: September 23, 1996

Reply Comment Date: October 8, 1996

By the Chief, Allocations Branch:

1. At the request of Maxagrid Broadcasting Corporation ("petitioner"), licensee of Station KLKM(FM), Channel 284C3, Llano, Texas, the Commission has before it the Notice of Proposed Rule Making, 10 FCC Rcd 4913 (1995), proposing the substitution of Channel 285C3 for Channel 284C3, the reallocation of Channel 285C3 from Llano to Marble Falls, Texas, and the modification of petitioner's license to specify Marble Falls as Station KLKM(FM)'s community of license. Petitioner and Kirkman Group, Inc. filed comments. Roy E. Henderson ("Henderson") filed a counterproposal. Petitioner filed reply comments. Henderson filed additional comments and petitioner filed a contingent petition for leave to respond.

2. In the Notice, we questioned whether petitioner's proposal would result in a preferential arrangement of FM allotments since its adoption would remove the sole local service licensed to the Llano, Texas. Although petitioner suggested that Channel 242A could be allotted to the community, we did not propose the allotment since petitioner did not state its intention to apply for the channel if allotted to Llano. However, in its comments, petitioner now states it will apply for Channel 242A if allotted to Llano, Texas.

3. In view of the aforementioned, we are issuing this Further Notice to solicit comments on the proposal to allot Channel 242A at Llano, Texas. Channel 242A can be allotted in compliance with the Commission's minimum separation requirements with a site restriction of

9.1 kilometers (5.7 miles) north in order to avoid a short-spacing conflict with the licensed site of Station KSJL(FM), Channel 241C1, San Antonio, Texas.<sup>1</sup> Since Llano is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Llano, Texas	284C3,	242A
Marble Falls, Texas	--	285C3

5. Parties may comment on the proposal to allot Channel 242A at Llano, Texas. We will not accept counterproposals with regard to the substitution of Channel 284C3 for Channel 285C3, and the reallocation of Channel 285C3 from Llano to Marble Falls, Texas, since an opportunity for the filing of such counterproposals has already been afforded. However, counterproposals may be filed with regard to the proposed allotment at Llano, Texas.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before September 23, 1996, and reply comments on or before October 8, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

J. J. McVeigh  
Bernstein and McVeigh  
1818 N Street Northwest, Suite 700  
Washington, D.C. 20036  
(Counsel for Petitioner)

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<sup>1</sup> The coordinates for Channel 242A at Llano, Texas, are North Latitude 30-49-57 and West Longitude 98-40-44.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleading. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleading. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleading, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.